

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LESLIE L. MALLOY,	§
	§
Defendant Below-	§ No. 445, 2005
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0410015009
Plaintiff Below-	§
Appellee.	§

Submitted: January 12, 2006

Decided: February 6, 2006

Before **HOLLAND, JACOBS**, and **RIDGELY**, Justices.

**ORDER**

This 6<sup>th</sup> day of February 2006, upon consideration of the appellant's Supreme Court Rule 26(c) brief, his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Leslie Malloy, was convicted by a Superior Court jury of first degree robbery and numerous related offenses. The Superior Court sentenced Malloy to a total period of thirty-five and a half years at Level V incarceration to be followed by decreasing levels of supervision. At trial, three eyewitnesses, who were the two victims and the arresting officer, identified Malloy as the perpetrator. Malloy did not testify in his own defense. This is Malloy's direct appeal.

(2) Malloy's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). Malloy's counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By letter, Malloy's attorney informed him of the provisions of Rule 26(c) and provided Malloy with a copy of the motion to withdraw and the accompanying brief. Malloy also was informed of his right to supplement his attorney's presentation. Malloy has not raised any issues for this Court's consideration. The State has responded to the position taken by Malloy's counsel and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims; and (b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.\*

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\* *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

(4) This Court has reviewed the record carefully and has concluded that Malloy's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Malloy's counsel has made a conscientious effort to examine the record and the law and has properly determined that Malloy could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice